

***“All the essential elements of a contract are autonomous and equal in the sense that each of them put together must be present in order for a valid and binding contract to come into existence.” A.R.M.C. Ltd v Elizade Nigeria Ltd. [2020] All FWLR pt. 1058 p.1030, pp.1063–1064; paras. E–A.***

## **DISCUSSION**

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## 1. INTRODUCTION

Contracts form the bedrock of modern commercial and personal transactions, serving as the invisible thread binding parties to promises, obligations, and expectations. In the realm of contract law, it is not merely the presence of an agreement that validates a contract, but rather the integration of distinct, autonomous elements, each essential, none superior to the other. As emphasised in *A.R.M.C. Ltd. v Elizade Nigeria Ltd.*<sup>1</sup> "All the essential elements of a contract are autonomous and equal," meaning that for a contract to attain legal validity and binding force, every one of its fundamental components, i.e. offer, acceptance, consideration, intention to create legal relations and capacity, must be present and function in harmony.

This declaration not only reflects the judicial interpretation of contract law principles but also reiterates the foundational philosophy that underpins contractual relationships in legal systems globally. No single element can compensate for the absence of another. Each serves a specific and irreplaceable purpose. For instance, while an offer initiates the process of forming a contract, acceptance completes the agreement, consideration provides the value, intention confirms the seriousness, and capacity validates the parties involved. The absence of even one of these elements renders the agreement legally impotent.

The equality and autonomy of these essential elements reflect the broader principle of fairness in contractual dealings. When one considers that contracts are fundamentally agreements between parties with potentially unequal bargaining power, the legal system provides a framework where the presence of all the elements acts as a safeguard against exploitation, misunderstanding, or manipulation. Therefore, these elements must be viewed not in isolation, but as interlocking gears within a complex but carefully designed machine.

This principle has been emphasised by courts repeatedly, particularly in Nigeria, where the judiciary remains committed to upholding the sanctity of contracts. The judgment in *A.R.M.C. Ltd. v Elizade Nigeria Ltd.* reflects a growing awareness that contracts are not mere formalities but solemn engagements that must meet specific legal thresholds. These thresholds are not arbitrary; they exist to ensure that parties are not bound by vague, ambiguous, or non-consensual agreements.

Ultimately, the demand that each essential element be present does not merely serve academic neatness; it is a practical necessity. Courts cannot enforce a contract that lacks

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<sup>1</sup> *A.R.M.C. Ltd. v Elizade Nigeria Ltd.* [2020] All FWLR pt. 1058 p.1030

clarity, mutual assent, legal value, or capable parties. To do so would be to undermine the very concept of enforceable obligations and plunge legal certainty into chaos. Thus, the legal system rightly insists on the autonomy and equal significance of all contractual elements, weaving them into the fabric of every valid and enforceable agreement.

The aim of this paper is to examine these essential elements in greater detail, analysing their roles, interdependence, and application within Nigerian contract law, and supporting this exploration with judicial authorities and practical examples.

## 2. OFFER

In the formation of a contract, an offer is the starting point of a valid contract. An offer may be defined as a definite undertaking by one party with the intention of being bound as soon as it is accepted by the party to whom it is addressed. An offer contains certain terms that a prospective offeree must examine properly before acceptance; and this means that an offer has to be precise, unequivocal and leave no room for speculation, ambiguity or double meaning.

An offer has also been defined as the expression by a party of readiness to contract on the terms specified by him which, if accepted by the offeree, gives rise to a binding contract.<sup>2</sup> It is important to bear in mind that an invitation is not an offer; rather, it is an offer to receive offers, an offer to chaffer or an invitation to receive offers.

An invitation to treat is the first step in negotiations between the parties to a contract, which may or may not lead to a definite offer being made by one of the parties to the negotiation. Because an invitation to treat is not an offer, it is not capable of acceptance and cannot lead to an agreement or contract. It rather serves as a preliminary to an offer.<sup>3</sup> Some people might mistake an invitation to treat with an offer, but they are not the same thing.

Some situations can present an invitation to treat, such as;

- **Auctions:** In an auction, an offer is not made. Rather, there is a call for offers from the people, where the highest bidder wins. The mere fact that a person attended an auction does not mean that there is a contract between them and the auctioneer. They only

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<sup>2</sup> I.E Sagay, *Nigerian Law of Contract*, Third Edition(revised), 2018, p. 19

<sup>3</sup> *Ibid*, p. 23

accepted the auctioneer's invitation, and it is left to them to make offers which the auctioneer can choose to reject or accept. If, however, the auctioneer chooses to accept bids, he is under a compulsion to accept the highest bid and go through with the transaction once the hammer has fallen, as stated in *Adebaje v. Conde*<sup>4</sup>.

- Display of goods on shelves in a shop: This has also been seen as a form of invitation to treat, and it is left to the buyer to pick up whatever they want and take it to the salesperson. Therefore, the buyers are the ones making the offer, and the salesperson is left with the responsibility of accepting. For example, if a buyer picks up a goods to buy and wanted to buy it for a price that is not up to par with the product, the sales person can reject it and refuse to sell the product also before money is accepted, any of the parties to the transaction can refuse to carry on with it as there is no contract yet, thereby no liability. An instance is the *Pharmaceutical Society of Great Britain v. Boots Cash Chemists*. A binding contract only comes in when the salesperson accepts the offer and money is paid.
- People standing at bus stations also constitutes an invitation to treat, and it is left to the buses to stop and make an offer to take them to their destination, and the people to accept by mounting the bus.
- Invitation to tender.

All these are invitations to treat and not offers, and thereby are not capable of acceptance.

Also, for an offer to be capable of acceptance, it has to be accepted the way it was presented, i.e. with no form of modification or adjustment, the terms included in the offer have to be followed to the letter without changes. An offer must be unconditionally and unqualifiedly accepted. In an instance where a party, the offeror, makes an offer to another, the offeree, but the offeree proposes an adjustment to the terms of the original offer before accepting, the original offer will automatically be ineffective and now the offeree's so-called modification has constituted a 'counter offer' thereby cancelling the original offer. This, and others have been regarded as types of offers, which upon defects -in form of acceptance- has

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<sup>4</sup> Learn Nigerian Law (2025) *Formation of Contract: Offer, Acceptance* (Accessed 27th June, 2025); <https://www.learnnigerianlaw.com/learn/contract-law/formation>

led to the outright cancelation of the offer, and that, if accepted, will not create a binding contract. These offers will be discussed as types of invalid acceptance under acceptance.

In relating the case of *A.R.M.C Ltd. v. Elizade Nigeria Ltd.* and the subject matter of offer, it can be expressly seen from the case that an offer moved from the appellant i.e. *A.R.M.C Ltd* to the respondents and it was an offer clear without any form of speculative terms or ambiguity. The respondents also accepted this offer unconditionally without any modifications or delay backed with consideration(payment). It is therefore inferred that there is a valid contract between the parties even without signing of the draft agreement since both parties have expressed interest clearly showing that they agree to be bound by the terms provided by the contract. Therefore, the offer made in this case is a valid sort of offer with a valid acceptance and consideration.

### 3. ACCEPTANCE

In the Nigerian law of contract, as articulated by Professor I.E. Sagay in his book titled *Nigerian Law of Contract*, acceptance is one of the cardinal pillars upon which a valid contract stands. Without valid acceptance, a mere offer remains an unenforceable expression of interest. The case of *ARMC Ltd v. Elizade Nigeria Ltd* provides a pragmatic interpretation of these theoretical principles, particularly in situations where a formal contract document is absent.

According to Sagay, acceptance is the final and unqualified expression of assent to the terms of an offer. It must mirror the terms of the offer completely and be communicated to the offeror. Acceptance must be absolute, unconditional, and, if stated, made in the mode prescribed by the offeror. Any variation in the terms results in a counter-offer rather than an acceptance. The case of *Hyde v. Wrench*<sup>5</sup> buttresses this. Sagay further outlines that acceptance can be by conduct or words, and that silence generally does not constitute acceptance unless previously agreed upon by the parties.

As highlighted by Sagay, the key elements of valid acceptance are:

- **Unqualified assent:** Acceptance must match the offer (the mirror image rule).

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<sup>5</sup> *Hyde v. Wrench* [1840] 3 Beav 334, EWCH Ch J90, 49 ER 132

- **Communication of acceptance:** It must be communicated to the offeror, and the contract is formed upon such communication.
- **Method of acceptance:** It must follow the mode prescribed or a reasonable alternative.
- **Time Frame:** Acceptance must be made within the time stipulated or within a reasonable time.
- **Awareness of offer:** The acceptor must have full knowledge of the offer at the time of accepting.

## TYPES OF INVALID ACCEPTANCE

- **Counter offer:** Any qualification or amendment of the offer will constitute a counter offer, which destroys (cancels) the original offer. The purported acceptance thus becomes a fresh offer, which is open to the original offeror, now the offeree, to accept or reject. As seen in *Best Nig. Ltd. V. Blackwood Hodge Nig. Ltd.*
- **Conditional acceptance:** This is an acceptance made subject to a condition, and it cannot create a binding contract until that condition has been met or fulfilled. See *Maja jnr. V. UAC.*
- **Cross offers:** An offer must be given by one party, to the other party to either accept or refuse it. No two parties attempting to contract can send the same offer to each other. When two parties, identical in terms are sent by two parties to each other, by post or by any other means, and the offers “cross” in the post or en-route, there is no contract. See the case of *Tinn v. Hoffman & Co.*<sup>6</sup>
- **Acceptance in ignorance of offer:** An offer cannot be purported to have been accepted when the party accepting has no knowledge of the offer. Whoever is not aware of an offer and its details cannot be said to have accepted the offer. See *Gibbons v. Proctor.*<sup>7</sup>
- **Acceptance of Tenders:** When a party advertises for tenders, it constitutes an invitation to treat. See *Great Northern Railway v. Witham.*<sup>8</sup>

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<sup>6</sup>*Tinn v. Hoffman & Co.* (1873) 29 L.T. 271

<sup>7</sup>*Gibbons v. Proctor* (1891) L.T. 594

<sup>8</sup>*Great Northern Railway v. Witham* (1873) L.R. 9 C.P. 16

In *A.R.M.C Ltd. v. Elizade Nigeria Ltd.*, the court was confronted with the question: “Can there be valid acceptance, and thus a binding contract, where no formal contract was signed, but other contractual elements had been performed?”

The Appellant (ARMC) argued that no contract existed because the *Share Sale Agreement (SSA)* was never formally signed. However, the Respondent (Elizade) contended that acceptance had occurred when it signified approval of the sale terms and made a substantial payment.

The court held that a valid contract existed, emphasising that:

*“The essential elements of a contract- offer, acceptance, consideration, and intention to create legal relations - were all present. Acceptance was established by conduct, not just by correspondence. Elizade paid the purchase sum and began to act on the agreement, demonstrating an unambiguous intention to accept the terms offered. The absence of a signed document did not negate acceptance, as the SSA was merely intended to formalise what had already been agreed upon.”*

Applying Sagay’s doctrine, the court affirmed that acceptance by conduct, especially when coupled with part-performance, binds the parties.

There are several legal implications arising from Sagay and *A.R.M.C Ltd. v. Elizade Nigeria Ltd.* in relation to acceptance. These include:

- **Silence and delay do not invalidate acceptance if conduct shows otherwise:** Sagay argues that performance or partial execution of an agreement can constitute acceptance. This was affirmed in the *ARMC case*, where payment and performance served as evidence of assent.
- **The mirror image rule may be flexible in practice:** Although Sagay upholds the mirror image principle strictly, Nigerian courts, as shown here, may interpret constructive acceptance where business realities and conduct reflect assent even without strict matching of terms.
- **Acceptance without signature can be valid:** In line with Sagay, courts do not always require a formal signature where actions imply acceptance. In *ARMC*, the agreement was not signed, yet acceptance was clear.

- **Intention trumps formalities:** Sagay notes that the parties' intention to be bound is key. The court reinforced this by holding that the intent to execute the contract and the steps taken toward its fulfilment satisfied legal acceptance.

#### 4. CONSIDERATION

A contractual agreement between two parties cannot be enforced by a party that has not provided consideration, with the sole exception being a contract under seal. For a contract to be binding, there must be an exchange of promises that ensures mutual benefit. Understanding what constitutes consideration and what does not is crucial, as it is a fundamental aspect of contractual agreements.<sup>9</sup>

According to Lush, J., in *Currie v. Misa*<sup>10</sup>, Valuable consideration in the eyes of the law may consist of any right, interest, profit, or benefit accruing to one party, or a forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other party. Essentially, consideration can be either a benefit conferred upon one party or a detriment suffered by another as part of the contract. It is vital to note that the detriment does not need to confer a benefit on the other party; its existence as a consequence of the contract suffices. For example, if A enters into a contract to buy B's house, the money paid by A is the consideration from A, while B's transfer of title of the house constitutes the consideration from B.

Conflicts exist regarding what should be recognised as valid consideration under the law. Tangible items like money, property, or goods are typically indisputable forms of consideration. However, intangible factors such as love, moral obligation, or affection have stirred debate. This question of moral obligation originated with Lord Mansfield in the 18th century but was effectively dismissed in the case of *Eastwood v. Kenyon*<sup>11</sup>. In this case, Eastwood, who had spent personal funds to support Mrs. Kenyon while she was a minor, sought repayment after she reached maturity. The court ruled that moral obligation does not constitute valid consideration<sup>12</sup>. In contrast, *Barclays Bank D.C.O. v. Sulaiman*<sup>13</sup>, suggested love and affection could be considered valid; however, this decision has faced criticism.

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<sup>9</sup> Treitel, op cit, p.49

<sup>10</sup> *Currie v. Misa* [1875] L.R. 10 Exch. 153 p. 162

<sup>11</sup> *Eastwood v Kenyon* (1840) 11 Ad & E 438, 113 ER 482

<sup>12</sup> Cheshire and Fifoot, *Law of Contract*, 12th ed. by M.P. Furmston, p. 63

<sup>13</sup> *Barclays Bank DCO v Sulaiman* (1961) All NLR 865 (HC)

Subsequent decisions, including *Faloughi v. Faloughi*<sup>14</sup>, have followed the precedent established in *Eastwood v. Kenyon*.

One major thing to note about consideration is that consideration must move from the promisee. The principle that consideration must move from the promisee signifies that only a party who has provided consideration in a contract can bring an action to enforce that contract. There are several scenarios that lead to a lack of consideration:

- **Total failure of consideration due to gratuitous promise:** Promises made without consideration may be unenforceable. In *L.A. Cardoso v. The Executors of the Late J.A. Doherty*<sup>15</sup>, The plaintiff discovered that despite promises made by the executors of a deceased party to allow him to remain in a property, he could not enforce this promise as he provided no consideration.
- **Total failure of consideration where there is no performance by the plaintiff:** If there is no performance on the part of the plaintiff or they cannot demonstrate readiness and willingness to perform, any action against the defendant will fail. This principle was established in *Bank of West Africa v. Fagboyegun*<sup>16</sup>, where it was found that the contract had no performance.
- **Consideration provided by a third party:** Parties who have not furnished consideration cannot sue under the doctrine of privity, which allows only parties to a contract to enforce it. For instance, in *Gbadamosi v. Mbadiwe*<sup>17</sup>, The court ruled against the plaintiff seeking to recover a loan given via his party to the defendant since the consideration came from a third party.
- **Claims exceeding agreed benefits:** A party can only claim benefits within the bounds of what is specified in the contract. In *U.T.C. v. Hauri*<sup>18</sup>, the court ruled that an undertaking obtained under duress without appropriate consideration was unenforceable.

Consideration can also come in the form of a promise. This is the case in executory and executed contracts. An executory contract is an agreement where one party promises something in exchange for a promise from the other, typical of bilateral contracts. An

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<sup>14</sup>*Faloughi v Faloughi* (1994) CLR 5 (CA)

<sup>15</sup>*L A Cardoso v The Executors of the Late J A Doherty* (1938) 4 WACA 4

<sup>16</sup>*Bank of West Africa v. Fagboyegun* [1961] WNLR 227

<sup>17</sup>*Gbadamosi v Mbadiwe* (1964) All NLR 441 (HC)

<sup>18</sup>*Union Trading Co Ltd v Hauri* (1940) WACA 417

example is A promising to buy B's house, creating an executory contract until it is performed. Conversely, executed contracts arise when one party has already performed an act in exchange for the other's promise, common in unilateral contracts. *Carlill v. Carbolic Smoke Ball Co.*<sup>19</sup> exemplifies executed consideration, as the plaintiff was induced by purchasing the product.

Some things may present themselves as consideration when, in fact, they are not. Let us take 'Past Consideration' for instance. Past consideration refers to acts performed before the formation of a contract and thus is typically not recognised as valid consideration. An illustrative case is *Re McArdle*<sup>20</sup>, where prior improvements made on a shared house were deemed insufficient when the parties later attempted to agree on payment. Exceptions exist when past actions were executed at a promisor's request with the understanding they would be compensated, as established in *Re Casey's Patents*.<sup>21</sup>

### **What exactly determines the adequacy and sufficiency of a consideration?**

While the courts do not examine the adequacy of consideration (whether it is a fair trade or not), they do evaluate its sufficiency. For consideration to be recognised as valid, it must not be vague, unascertainable, or meaningless.<sup>22</sup>

- **Something of value in the eyes of the law:** What constitutes value may be subjective; thus, courts work to establish objective standards. G.H. Treitel argues that consideration is valid if recognised by law as having economic value, while opinions vary amongst academics about its definition<sup>23</sup>. Courts have ruled that a party satisfies consideration by relinquishing something valuable or refraining from exercising a right.
- **Performance of existing duty:** If someone is already obligated to perform an act, can they claim additional benefit? Generally, performing a legal duty is insufficient unless the task exceeds legal requirements, as seen in cases like *Collins v. Godefroy*<sup>24</sup> and *Glassbrook Brothers Ltd. v. Glamorgan County Council*<sup>25</sup>.
- **Duty imposed by contract:** If someone is obligated under their existing contract, fulfilling that duty typically does not provide additional valid consideration unless the

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<sup>19</sup> *Carlill v Carbolic Smoke Ball Co.* [1893] 1 QB 256

<sup>20</sup> *Re McArdle* [1951] Ch 669

<sup>21</sup> Sir Frederick Pollock, *Principles of Contract*, 13th ed., pp. 147-150

<sup>22</sup> *Ibid*, p. 133

<sup>23</sup> G. H. Treitel, *The Law of Contract* (9th ed., Sweet & Maxwell 1995)

<sup>24</sup> *Collins v Godefroy* (1831) 1 B & Ad 950, 109 ER 1040

<sup>25</sup> *Glasbrook Bros Ltd v Glamorgan County Council* [1925] AC 270 (HL)

performance exceeds what is required, as illustrated in *Hartley v. Ponsonby*<sup>26</sup>, where extra wages were deemed sufficient consideration once the crew's obligation changed.

Understanding these principles helps clarify the nature of contracts and the importance of consideration in ensuring enforceability.

## 5. INTENTION TO ENTER LEGAL RELATIONS

The intention to create legal relations, also referred to as “intention to be legally bound,” is a fundamental doctrine in contract law, particularly within English contract law and similar common law jurisdictions. This intention is a necessary and independent element in forming a valid contract, serving as a threshold requirement across all types of contracts.

The general principle dictates that a contract formed with valuable consideration will not be enforced unless both parties explicitly intend to be legally bound. Essentially, this means that each party is prepared to accept the legal consequences of failing to fulfil their obligations. For an offer to be considered binding upon acceptance, it must be communicated in a manner that reasonably suggests an intention to create legal consequences. Therefore, the intention to enter into legal relations becomes a critical criterion that determines the enforceability of a contract. In the absence of this intention, no binding contract exists since a contract, as defined by Treitel, is “an agreement giving rise to obligations which are enforced or recognised by law.”<sup>27</sup>

The assessment of this intention uses an objective test, meaning it is judged by how a reasonable person would interpret the conduct of the involved parties, not their personal feelings or internal motives. To identify whether there is a contractual intention in different agreements, one must carefully examine the nature of those agreements.

In the realm of **domestic and social arrangements**, there exists a rebuttable presumption that the parties do not intend to create legal relations. Such agreements, often deemed “engagements” as referenced in Professor Sagay’s *Nigerian Law of Contract*<sup>28</sup>, are typically seen as informal and lacking in legal intention. Domestic agreements, which pertain to familial arrangements or those made in a social context, illustrate a clear distinction

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<sup>26</sup> *Hartley v Ponsonby* (1857) 7 El & Bl 872, 119 ER 1471

<sup>27</sup> *Ibid*, p. 1

<sup>28</sup> See n 1, *supra*, p. 140-142

between a mere agreement and a legally enforceable contract. These agreements often stem from moral rather than legal obligations.

For example, when married couples living together reaches an understanding, courts presume that there is no intention to form a contractual relationship, and thus, parties cannot sue one another based on these agreements. Similarly, social agreements- those based on friendships or close acquaintances- are also presumed not to carry legally binding intentions.

A notable case illustrating this principle is *Balfour v. Balfour*<sup>29</sup>, in which a civil servant promised his wife a monthly allowance of £30 while working in Ceylon. When he failed to make the payment, his wife sued him for enforcement. The Court of Appeal found this arrangement to be merely domestic; therefore, no contract existed as the parties did not intend for the arrangement to be legally binding. Such family arrangements are based on good faith rather than legal enforceability.

Nevertheless, this presumption can be rebutted under certain circumstances. For instance, in *Meritt v. Meritt*<sup>30</sup>, after a separation between a husband and wife, they agreed that he would pay her £40 a month, allowing her to pay off the mortgage on their home. After fulfilling her responsibility, he refused to transfer the house to her. The court ruled the agreement binding, stating that the presumption of absence of contractual intention does not apply when:

- The couple is no longer living amicably or has separated.
- The agreement is documented in writing, or,
- One party has made significant sacrifices at the other's request, as seen in *Parker v. Clark*.

These are the scenarios where contractual intention in domestic agreements may be deemed legally binding.

In contrast, **commercial agreements** are characterised by a strong presumption of contractual intention. Courts generally interpret agreements made within a commercial context as legally binding. This presumption empowers parties in such agreements to pursue legal action in the event of a breach. The robustness of this presumption is such that

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<sup>29</sup> *Balfour v. Balfour* [1919] 2 K. B. 571

<sup>30</sup> *Merritt v. Merrit* [1970] 1 WLR 1211

challenges regarding the validity of commercial agreements on the grounds of lacking contractual intention are exceedingly rare.

However, the presumption can be displaced where the parties declares an absence of contractual intention through the use of **honor clauses** and **mere puffs**. Where an agreement contains a clause that expressly excludes the contractual intention of parties, the presumption that commercial arrangements will give rise to legal relations may be rebutted by such evidence. See the foreign case of *Rose and Frank Co. V. Crumpton Bros*(1923).<sup>31</sup> In Nigeria, the “honour clause” are all centred on football pool arrangements between stakers and the pools companies. There is always a clause in football coupons stating that; all arrangements will not give rise to legal relations or litigation but are binding in honour only, as seen in the case of *Amadi v. Pool House Group and Nigerian Pools Co.*<sup>32</sup>

**Mere puffs** occurs where parties assert that their promise was not intended to be taken seriously or literally. Moreso, in the case of *Weekes v. Tybald*,<sup>33</sup> the defendant said in a conversation that he would give 100 Pounds to anyone who married his daughter with his consent. The plaintiff married the defendant’s daughter with his(defendant’s) consent and afterwards sued to claim the 100 pounds when the defendant failed to pay him. The action failed and it was established that the defendant’s promise was a mere puff without any intentions to be bound. In such situations, court uses the “test of a reasonable man” to determine whether such promise is a mere puff or not.

Although all commercial agreements are presumed to have contractual intentions inherent in them, strict attention must be given to the situations surrounding the agreements in order to know the actual intentions of parties to the agreement.

## 6. CAPACITY TO CONTRACT

Capacity to contract is a fundamental principle in Nigerian contract law, ensuring that parties possess the legal competence necessary to understand and engage in contractual obligations. This analysis explores the concept of capacity to contract through the lens of the Supreme Court ruling in *A.R.M.C. Ltd v. Elizade Nigeria Ltd*. The court's decision affirmed that a valid contract was formed based on the essential elements of offer, acceptance, and consideration, even in the absence of a signed formal agreement. This paper will delve into

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<sup>31</sup> [1925] A. C. 445.

<sup>32</sup> [1966] 2 All N.L.R. 254.

<sup>33</sup> (1605) Noy 11.

the role of capacity in contracts, potential challenges to its validity, and its implications within the context of the case.

Capacity to contract refers to the legal ability of parties to enter into binding agreements, which necessitates that individuals (or entities) are of sound mind, of legal age, and not barred by law from contracting, such as minors, individuals suffering from mental incapacities, intoxicated persons, or those under legal disabilities. In the ruling of *A.R.M.C. Ltd v. Elizade Nigeria Ltd*, the Supreme Court stated that “all the essential elements of a contract are autonomous and equal in the sense that each of them must be present for a valid and binding contract to exist”<sup>34</sup>. Competence in contracting is an implicit prerequisite; a contract lacking competent consent is fundamentally flawed.

In this case, both the Appellant (A.R.M.C. Ltd) and the Respondents (Elizade Nigeria Ltd) were corporate entities governed by the Companies and Allied Matters Act (CAMA) 2020, specifically section 35, which grants registered companies the capacity to enter into contracts as long as their actions align with their memorandum and articles of association. The case established that A.R.M.C. Ltd, through its authorised representatives, offered to sell approximately 38 million shares in July 2008, with Elizade Nigeria Ltd accepting the offer unconditionally and paying in full. This suggests *prima facie* capacity, as corporate actions are typically executed by boards or authorised agents acting within their delegated powers.

However, a thorough examination of capacity within a corporate framework necessitates consideration of the authority with which representatives operate. Under *Sec 63 of CAMA 2020*<sup>35</sup>, a company's board of directors must authorise significant transactions like share sales to ensure the company does not exceed its capacity. If A.R.M.C. Ltd.'s offer was issued by an unauthorised agent, the contract could be deemed voidable due to *ultra vires* actions, as established in *Okeowo v. Migliore*<sup>36</sup>. Similarly, while Elizade Nigeria Ltd.'s acceptance and payment imply board approval, any influence of misrepresentation or duress could potentially challenge their informed consent and thus raise questions about their capacity to contract. However, since no such challenges were raised, the internal governance structures of both corporations appeared to support their competence.

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<sup>34</sup> See n. 1, *supra*

<sup>35</sup> Companies and Allied Matters Act 2020, s. 63

<sup>36</sup> *Okeowo v Migliore* [1979] 11 NSCC 348.

The Supreme Court's emphasis on offer, acceptance, and consideration underscores a presumption of intact capacity. The Respondents' refusal to sign the draft agreement and subsequent retraction, citing undisclosed encumbrances, focused on the contractual terms rather than questioning competency, reinforcing the assumption that both entities and their representatives were legally capable.

The absence of challenges to capacity in *A.R.M.C. Ltd v. Elizade Nigeria Ltd.* reflects its assumed presence as a vital contractual element. Nonetheless, a more profound exploration reveals its critical role in the court's reasoning. Had capacity been contested, various scenarios could have influenced the outcome:

- **Ultra vires acts:** If A.R.M.C. Ltd.'s offer exceeded its authorised powers (for instance, selling shares without board approval), the contract would be voidable under *CAMA 2020, Sec 65*<sup>37</sup>. This principle aligns with the precedent set in *A.G. Federation v. Abubakar*<sup>38</sup>, where the court's validation indicates A.R.M.C. Ltd.'s offer was within its corporate capacity.
- **Misrepresentation or duress:** If Elizade Nigeria Ltd.'s acceptance had been coerced by fraudulent misrepresentation or undue pressure, this could potentially impair their ability to consent, rendering the contract voidable under common law principles, as noted in *Solanke v. Abed*<sup>39</sup>. The Respondents' retraction, grounded on encumbrances rather than claims of incapacity, illustrates that there were no significant challenges to the parties' legal competence.

## 7. RELATIONSHIP AMONG THE ELEMENTS OF A CONTRACT

Having understood the essential elements of a contract, the question of “which element is the most essential?” arises. It is an impossible question as each element of a contract, while independent from one another, plays equal significance in the formation of a valid contract. The absence of just one element will make a contract void. Let us now delve into the interdependence of these elements on one another.

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<sup>37</sup> See n. 10, s. 65

<sup>38</sup> *A.G. Federation v. Abubakar* [2007] 10 NWLR (Pt. 1041) 1

<sup>39</sup> *Solanke v Abed* [1962] 1 All NLR 115

Every valid contract begins with an offer- a clear proposal to perform an action (or refrain from doing so)- with the expectation that it will become binding upon acceptance. However, not every expression qualifies as an offer.

In the landmark case, *Carlill v Carbolic Smoke Ball Co*<sup>40</sup>, the company offered £100 to anyone who used their product and still contracted the flu. When Mrs. Carlill used the product as directed and fell ill, she claimed the reward. The court ruled this constituted a valid offer to the public, with her use of the product serving as an unequivocal acceptance.

In contrast, the case of *Fisher v Bell*<sup>41</sup> saw a shopkeeper displaying a flick knife in his shop window. The court determined this was not an offer but rather an invitation to treat- essentially, a signal for customers to make their offers to buy.

Furthermore, acceptance must precisely mirror the original offer. In *Gibson v Manchester City Council*<sup>42</sup>, the council's statement that it “may be prepared to sell” a house was deemed too vague for acceptance, resulting in no binding contract. Thus, for a contract to form, there must be a clear offer and a corresponding acceptance, devoid of ambiguity and uncertainty.

For a contract to be enforceable, it must include consideration, meaning each party must provide something of value. This does not always have to be monetary; it could involve a service, an act, or even a promise. However, it must be exchanged as part of the agreement.

In *Carlill v Carbolic Smoke Ball Co*<sup>43</sup>, Mrs. Carlill’s use of the smoke ball as directed served as valid consideration. Notably, past actions are not counted as consideration- once a promise is made, only new acts can contribute to it. This principle underscores the necessity of consideration: transforming a casual promise into a binding agreement where both parties benefit.

Even if there is an offer, acceptance, and consideration, a contract will not be legally enforceable unless both parties intended to establish a binding agreement.

In *Balfour v Balfour*<sup>44</sup>, a husband’s promise to send money to his wife while they were apart was found unenforceable, as the court determined that domestic agreements

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<sup>40</sup> See n. 15, *supra*

<sup>41</sup> *Fisher v Bell* [1961] 1 QB 394.

<sup>42</sup> *Gibson v Manchester City Council* [1979] 1 WLR 294.

<sup>43</sup> See n. 16, *supra*

<sup>44</sup> See n. 8, *supra*

typically lack legal intent. Conversely, in *Welch v Jess (1976)*, two friends who agreed to split prize money from a fishing competition were protected by the court when one failed to honour the agreement, illustrating that legal intention can be inferred if both parties treat the agreement seriously.

A well-formed agreement requires that all parties possess the legal capacity to contract. This means they must be of sound mind, free from duress, and typically of legal age. Case law, including *Amadi v Obiajunwa (2016)* in Nigerian law, underscores that a lack of capacity- such as being a minor or mentally incapacitated- can render a contract void or voidable. Thus, everyone involved must fully understand and agree to the terms of the contract.

Consider the elements of a valid contract as ingredients in a recipe: omit one, and the entire dish may fail. A valid offer and acceptance build the agreement. Consideration adds essential value. Intention reflects the seriousness of the parties involved. Capacity ensures all parties can legally engage in the contract.

In *Carlill v Carbolic Smoke Ball Co*, the advertisement constituted a valid offer; Mrs. Carlill's use of the product demonstrated acceptance and valid consideration, while the company's £100 deposit indicated legal intent, and all parties could contract. In contrast, *Rose & Frank v Crompton*<sup>45</sup> revealed that an agreement without intent to create legal obligations cannot be enforced, despite initial consensus.

Ultimately, a valid contract requires all these elements to work harmoniously. Each component supports the others, like interlocking gears in a machine. If one part falters, the entire mechanism may fail, which is why courts scrutinise how each element interacts when determining a contract's binding nature.

## 8. CONCLUSION

In conclusion, the essential elements of a valid contract in Nigerian law, as underscored by the court's decision in *A.R.M.C. Ltd. v Elizade Nigeria Ltd.*, are indeed autonomous and equal, each playing a pivotal role in the formation and enforceability of

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<sup>45</sup> *Rose and Frank Co. v Crompton & Bros Ltd.* [1925] AC 445.

contractual agreements. The absence of any one of these elements can have profound implications, potentially rendering a contract void or voidable. As commercial transactions continue to evolve and become increasingly complex, adherence to these foundational principles is crucial for ensuring the integrity and efficacy of contractual relationships. By rigorously applying these elements, parties can safeguard their interests, minimise disputes, and foster a stable commercial environment. Ultimately, the meticulous attention to these contractual essentials not only upholds the sanctity of contract but also promotes confidence and predictability in business dealings, which are indispensable for economic growth and development.

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